HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.32674 of 1997

Dated:14.03.2007

Between:

The Adilabad District Co-operative Central Bank Limited, Adilabad.

…Petitioner.

and

The Hon'ble Cooperative Tribunal, Hyderabad, and others.

…Respondents

HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.32674 of 1997

ORDER:

The petitioner had several Primary Agricultural Co-operative Societies in the Adilabad District, affiliated to it. The loans that are to be advanced to the members of the societies comprise of two components; namely, cash and fertiliser. With a view to make available fertilisers to the societies, the petitioner entered into correspondence with the

2nd respondent, the A.P.State Co-operative Marketing Federation Limited. After several rounds of discussion, the 2nd respondent supplied fertiliser worth Rs.33,43,782/-, up to 31.07.1987. However, the amount was not paid immediately. After prolonged correspondence, the said amount was paid on 30.06.1992. The 2nd respondent adjusted the said amount, partly towards principal and partly towards accrued interest calculated at 20.5%, per annum. An amount of Rs.6,82,575/- was shown as balance, towards principal and interest.

Alleging that the petitioner did not pay the due amount, the

2nd respondent sought arbitration of the dispute before the Deputy Registrar of Cooperative Societies, the 4th respondent. After hearing both the parties, the 4th respondent passed an award, dated 26.03.1993, upholding the claim of the 2nd respondent. Aggrieved thereby, the petitioner filed C.T.A.No.343 of 1994, before the Co-operative Tribunal, Hyderabad. The appeal was dismissed on 07.10.1996. Hence, this Writ Petition.

Sri P.Venkata Swamy, learned counsel for the petitioner, contends that there was no specific agreement between the parties, for payment of interest. He submits that the 2nd respondent failed to plead, or prove the existence of any practice, as to the payment of interest as well as the rate thereof.

The 2nd respondent filed a counter-affidavit stating that the practice as to payment of interest was very much in vogue, and in fact, the rate of interest was indicated in every invoice.

Sri Praveen Kumar, learned counsel for the 2nd respondent, submits that the petitioner had undertaken to pay the cost of fertiliser and when there was 5 years of delay in payment of the amount, the interest is leviable. He contends that the petitioner never protested, when the interest at 20.5%, per annum, was indicated in the invoices.

The dispute relates to the levy of interest, and rate thereof, on the cost of fertilisers supplied by the 2nd respondent, at the instance of the petitioner. The quantity of fertiliser supplied to various societies and the cost thereof, are not in dispute. Admittedly, the cost of fertilisers, being Rs.33,43,782/-, was paid almost 5 years after the payment became due. On its part, the petitioner felt that payment of this amount would liquidate its liability. The 2nd respondent, however, insisted that the interest at 20.5%, per annum, is chargeable according to the trade practice.

From a perusal of the award passed by the 4th respondent, it is no doubt evident that certain discussion was undertaken about the

leviability of interest. However, on the question of the quantum, the award is silent, except for a conclusion that the petitioner is liable to pay interest at 20.5%, per annum. The 4th respondent did not undertake any discussion, on the levy of interest at such rate. Once the 2nd respondent pleaded existence of trade practice, it was for him to place the relevant material before the 4th respondent, touching upon the rate of interest. The levy of interest, as such, must not pose any difficulty, because, except where it is otherwise agreed to, any delayed payment would attract interest.

Whenever the agreement between the parties is silent about the rate of interest, the party claiming it, must prove the prevailing rates of interest as well as the nature of contract. Much would depend upon the relationship between the parties also. It is to be noted that the petitioner and respondents are organisations working in the co-operative sector, in the State. Earning of profit is not at all their motive. The contention of the petitioner that the rate of interest prevailing, at the relevant point of time, did not exceed 10%, for the transactions undertaken by the

co-operative organisations is not seriously refuted. This Court is of the view that the ends of justice would be met, if the simple interest at 12%, per annum, is awarded to the 2nd respondent for the period between 31.07.1987 and 30.06.1992.

Hence, the writ petition is partly allowed, directing that the award passed by the 4th respondent shall stand modified to the extent that the rate of interest shall be 12%. Necessary calculations shall accordingly be made by the parties concerned. There shall be no order as to costs.

Dt.14.03.2007 **L.NARASIMHA REDDY, J**

GJ